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Our Ref : [REDACTED]



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Urgent

FAO [REDACTED] and Mr Dermot Pearson
Rotherham Metropolitan Borough Council
Finance & Customer Services Directorate
Legal Services
Riverside House
Main Street
Rotherham
S60 1AE

20 October 2016

Dear Sirs,

Alleged Trespass on Council owned Land off Droppingwell Road, Thorpe Hesley, Rotherham to Access the site known as Watson's Tip

We refer to your letter dated 10 October 2016 received by hand at these offices after 5.00 pm on 10 October 2016. Therefore, we are treating your letter as having been received by us on Tuesday 11 October 2016.

The meeting on 11 August 2016

1. Before we address the primary issue raised in your above letter, it is necessary to address the events from 11 August 2016 up to the receipt of your above letter. This will put the contents of your above letter into context and will highlight to you why we read the contents of your letter with some degree of credulity.
2. We note that your letter is stated to be written on behalf of Rotherham Metropolitan Borough Council's ("the Council") Mr Wilson. We presume that this is a reference to Mr Damien Wilson, with whom the writer and our [REDACTED] met on 11 August 2016 at the Council's offices at Riverside House ("the Meeting"). Also in attendance at the Meeting was the Council's [REDACTED] and [REDACTED] of the Environment Agency (the "EA").
3. Prior to the Meeting, an agenda was circulated by the Council's [REDACTED]. That agenda stated that the purpose of the Meeting was *"to discuss the proposals for the site, any mitigation proposed which would minimise complaints and how best to provide factual information to the public about the site."*
4. At the Meeting there was a discussion as to how MHH Contracting Limited ("MHH")/Grange Landfill Limited could work together with the Council and the EA so as to inform local

residents and businesses about how the landfill site off Droppingwell Road ("the Site") was going to operate when it reopens early next year. It was agreed at the Meeting that the Council, the EA and Grange Landfill Limited would work together to produce a fact sheet of information (the "Fact Sheet") that could be distributed to local residents and business to inform them of, amongst other things, how the Site would operate, what hours it would operate and how many vehicles would be accessing the access road from Droppingwell Road to the Site (the "Accessway"). It was agreed that the first draft of the Fact Sheet would be produced by the Council and that this would then be completed by MHH/Grange Landfill Limited prior to circulation by the Council to all stakeholders.

5. Further, at the Meeting, there was a discussion as to how to avoid a situation whereby lorries attending at the Site would back up along the Accessway. Mr Wilson commented during those discussions that there was nothing that the Council could do to prevent such a situation from occurring but he was reassured that measures would be put in place to prevent this.
6. On 15 August 2016, the writer telephoned your [REDACTED] to enquire as to when the first draft of the Fact Sheet could be expected. The writer was informed that [REDACTED] was to work on the Fact Sheet that week and then provide a first draft the following week when Mr Wilson had been able to consider the draft. At that stage, [REDACTED] explained that she had not been able to discuss the contents of the Fact Sheet further with Mr Wilson following the Meeting.
7. On 15 September 2016, the writer again called [REDACTED] to ask whether the Council were now in a position to provide a first draft of the Fact Sheet. [REDACTED] advised that there had been a delay in producing the Fact Sheet as the EA were reluctant to be involved in the production of the same. However, the Fact Sheet was still to be produced and the writer advised that he looked forward to receiving the same.
8. Following the conversation on 15 September 2016, the BBC aired a programme on 19 September 2016 which featured the Site. Prior to the airing of that programme, a director of Grange Landfill Limited had been approached by the BBC production team for his comments on the issues to be raised in the programme. It was then represented to the BBC, and (partly) reported in the programme itself, that Grange Landfill Limited had recently met with representatives of the Council and agreed to work together with the Council to produce a fact sheet for local residents giving them accurate and detailed information about the operations that would take place at the Site. The BBC were advised that "we are presently waiting for the Council to provide a first draft of this consultation document".
9. On 7 October 2016, having heard nothing further from the Council in relation to the Fact Sheet, the writer emailed [REDACTED] copied to Mr Wilson. That email contained the following:

"I should be grateful if you could update me on where you are at with the fact sheet that we agreed to produce for the local residents and businesses?"

When we spoke on 15 Aug, following the meeting on 11 Aug, you explained that you were waiting for Damien to see the draft as he was away that week. When we spoke more recently, you explained that the delay had been caused as a result of the EA's unwillingness to be seen to be involved in producing the fact sheet.

We are presuming that it is still intended that a fact sheet is going to be prepared and we look forward to receiving the first draft as soon as possible. We are very conscious that there has been a significant amount of misleading information generated by local media recently and it is hoped that the fact sheet will go some way to giving the local residents and businesses an accurate description of how the landfill will operate when open"

10. Neither [REDACTED] or Mr Wilson responded to that email despite the writer receiving "read receipt" notifications from both.
11. The only written communication that we have received from the Council following the Meeting was your letter dated 10 October 2016 which alleged that the Accessway passes over Council owned land and that MHH, employees and/or contractors do not have any right of way over that Accessway and that in the event that we do not cease using the Accessway then the Council will consider issuing proceeding for an injunction in order to prohibit any further alleged trespass and claim damages in trespass. Your letter of course was also dated the same day that you changed the lock on the gates on the Accessway (the "Gates") so as to prevent MHH, its employees, agents and contractors from accessing the Site via the Accessway as they had done for in excess of twenty years.
12. Given the above chain of events, you will therefore appreciate why the contents of your letter was read with some surprise to say the least. We had been led to believe that MHH and Grange Landfill Limited were working together with the Council to produce the Fact Sheet, which would include details of how frequently the Accessway would be used. It would now appear to us that the Council had no intention whatsoever (or if it did as at 11 August 2016 that intention subsequently changed) of producing the Fact Sheet in conjunction with MHH, Grange Landfill Limited and the EA. If that is the position, then we would have at least expected the courtesy of being informed that the Council no longer wished to produce the joint Fact Sheet and that the Council's revised (it would appear) position was that no right of way exists along the Accessway. Instead, the Council has sought to threaten this company with serious and expensive litigation and to unilaterally prevent egress along the Accessway on both 10, 11 and 12 October 2016.
13. To be frank, this is not how we would have expected a publicly funded body to have conducted itself and, given what is known now, we would go as far as to allege that the Council has acted in an underhand manner. In the event that the Council do make an application to Court to seek the injunction as referred to in your letter, you are reminded of your obligation to ensure that the application for the injunction contains all relevant information. We would therefore expect that the Council's actions as described above and the concerns that we have expressed be fully set out in any application.

Your letter dated 10 October 2016 and the events of 10 and 11 October 2016

14. It is agreed and accepted that access was gained to the Site via the Accessway on 10 October 2016 by the cutting of the padlock on the gate. At that time, it was not known that the Council's position was that there was no right of way over the Accessway and it was unclear as to why the padlock had in fact been changed. As we refer to further below, a key has been held by ourselves for the padlock on the Gates for many years in conjunction with Millmoor Juniors Football Club. The padlock was immediately replaced by our [REDACTED]

██████████ It is not accepted that the Gates were forced open in the wrong direction or that the Gates were in any way damaged.

15. Further a temporary compromise was agreed between Mr Wilson and our ██████████ on 10 October 2016 in the presence of the Police Officer that was in attendance. As you correctly say, it was agreed that the Gates would be locked at 6.00 pm and re-opened at 7.00 am for the next few days to allow the contractors and employees that were on Site to leave the Site and to access to the Site along the Accessway. As you were aware from the email dated 7 October 2016 referred to above and from Mr Wilson's discussions with ██████████ it was necessary to gain access to the Site at this time as drilling contractors were required to carry out borehole testing on the Site so that an environmental monitoring infrastructure could be installed as required by the terms of the permit issued by the EA.
16. It was therefore somewhat of a further surprise to us to note from your letter of 10 October 2016 that the Council were not prepared to allow access to the Site over the Accessway on the afternoon of 10 October 2016 or on 11 October 2016 as agreed. As a result, it was necessary to install a manned guard on Site overnight on 10 October 2016 in order to ensure that the equipment of the contractor was protected as we were unable to remove the same from Site. It is not clear to us why, within a few hours of a compromise being agreed as regards the use of the Accessway, the Council deemed it appropriate to revoke such an agreement. It is alleged in your above letter that this was a reasonable approach to take in the absence of any evidence that MHH had any right of way over the Accessway. However, it was clearly the Council's position, prior to the agreement being reached between Mr Wilson and ██████████ that no right of way existed. Therefore, we do not accept that it was reasonable to revoke the temporary compromise that had been reached. It is our opinion that it was the intention to cause MHH, its employees, its agents and its sub-contractors as much disruption as possible when the Council were aware that drilling contractors had been engaged to attend Site and that it was necessary for that Contractor to be present on Site for the next two weeks or so. The Council were aware of this fact as a result of the EA issuing a briefing note to all stakeholders on 7 October 2016 telling it that work would commence on 10 October 2016 and this was also referred to in the writer's email to ██████████ dated 7 October 2016 as referred to above.
17. As stated below, given that the Accessway had been used for many years previous to that by MHH, its employees, agents and contractors without objection, we fail to see why it was necessary to take such a draconian step with no forewarning or discussion with ourselves.

Your letter dated 10 October 2016 – The Right of Way issue

18. You have made it clear in your above letter and by your actions at the Accessway last week that the Council's position is that MHH has no right of way over the Accessway. We do not agree. We say this for the reasons set out below.

The Rights of Way

19. As you are no doubt aware, the Site is registered at the Land Registry under title number SYK425307. A copy of the Land Certificate that we hold is enclosed.
20. You will note that pursuant to paragraph 3 of the Property Register of title SYK425307 that the Site has the benefit of the rights granted by the Conveyance dated 13 February 1929 between (1) John Henry Baring and others and (2) Alick Watson (the "1929 Conveyance").

particular, this shows clearly the right of way along the Accessway from Droppingwell Road to the Site.

- b. A copy of the plan referred to in the Conveyance between Watson and Hague Plant Excavations Limited ("HPEL") dated 21 March 2000. HPEL being the previous name of MHH. As can be seen from the plan, the two rights of way as shown in the plan to the conveyance dated 28 January 1955 are depicted coloured green. It is accepted that the right of way that forms the Accessway is shown as taking a slightly altered course as the Accessway approaches Droppingwell Road. We refer to the apparent deviation of the line of the Accessway below.

24. In the circumstances it is clear beyond doubt that an express right of way does exist along the Accessway and that this has been the case since 1929. It is not clear why such a right of way was not noted on the three titles that are held by the Council over which the Accessway passes. It is likely that as the plan to the 1929 Conveyance was not filed with the Land Registry on registration in 2000 that the Land Registry did not have sufficient information to enable it to identify the reference points from the 1929 Conveyance. This has no effect upon the fact that such rights exist. Nor does the fact that this is not noted on titles numbered SYK558714, SYK558707 and SYK558715.

Proprietary Estoppel

25. In any event and without prejudice to the above, our position is that the Accessway has been used as the main means of gaining access to the Site for well over 80 years and for many years it has been used to access the Site whilst the site has been used for the movement of waste products, whether that be from the Site or to the Site. In summary, we are of the opinion that we are able to clearly demonstrate that the Council has allowed the Accessway to be used to access the Site and for the Accessway to be used to tip at the Site under the terms of the existing planning permission and that the Council is now, through its actions, estopped from denying that the Accessway can be used for such purposes.
26. To be able to fully appreciate our position it is necessary to consider the history of the Site.
27. The existing landfill site (phase 1) was first developed in the 1950's and was operated for the disposal of waste from the construction industry. As you are no doubt aware, planning permission was granted for the use of the Site for "tipping" in December 1950 (Application No 142/50) and a further permission was granted on 23 January 1958 to "increase the height and extend the industrial tip at Droppingwell Road" (Application No 182/57). By 1957, the Ordnance Survey map clearly shows signs of a refuse tip and that access to the Site was off Droppingwell Road to the east. It is clear from subsequent editions of Ordnance Survey maps that the tip at the Site grew steadily through the 1960's, 1970's and 1980's.
28. Waste disposal licensing was introduced in the late 1970's and accordingly the Site was first regulated for waste disposal in January 1978, although it had clearly been operational for many years prior to this date.
29. The Site was granted a waste disposal licence on 11 January 1978 (Ref WD 20 R21). A copy of that licence is enclosed. The licence was granted to Alick Watson Limited by South

Yorkshire County Council, the predecessor of the Council. You will note that the location of the site to which the licence relates is described as being "Watson's Tip off Droppingwell Road, Kimberworth, Rear of Grange Colliery". The licence was subject to a number of conditions and you will note that condition number four stipulated that: "A road shall be provided from the site entrance on Droppingwell Road to the site control office. The road shall be maintained to the reasonable satisfaction of the County Council". It is clear that, consistent with the use of the Accessway, the licence stipulated that the Accessway must be used to access the Site from Droppingwell Road.

30. Modifications to the waste disposal licence numbered WD 20 R21 were issued on 17 December 1980, 1 July 1983, 11 October 1990, 10 September 1993, and 22 February 1994. The first two of those being issued also by South Yorkshire County Council. The modification dated 11 October 1990 was issued by the Council and deleted the original schedule of conditions attached to the original licence and replaced the same with schedule of conditions WD20 R21 MOD 1. The revised schedule of conditions also included the stipulation that: "A road shall be provided from the site entrance on Droppingwell Road to the site control office. The road shall be maintained to the reasonable satisfaction of the County Council".
31. The final two modifications were issued by the South Yorkshire Waste Regulation Joint Committee to whom the function of issuing waste licences had been transferred by this time. However, both modifications contained the reference to the use of the Accessway from Droppingwell Road.
32. As you will be aware, on 13 January 1992, the Planning Inspectorate determined an appeal by Wimpey Waste Management Limited against the Council's refusal to develop land at Grange Park, Droppingwell which included within it the Site. As you are also aware, it was concluded by the Planning Inspectorate that an operator would find it possible to continue tipping under the terms of the 1958 planning permission. Significantly, as there was also consideration given during that appeal process and in the appeal to the present access to the Site along the Accessway way itself. It is noted in particular that the Planning Inspectorate determined that: "*There are rights of access to the 1958 tip site from Upper Wortley Road and Droppingwell Road*". We are not aware of the Council ever having taking issue with such a finding of fact.
33. In addition, we note that as part of the original planning application process, the Council produced plan numbered 3241/A dated "Dec 1989" which had detailed on it what was described as "Existing Rights of Access". A copy of the plan is attached to this letter. You will note that it was represented that rights of access existed to the Site from both Droppingwell Road along the Accessway and also to the Site via Upper Wortley Road. You will also note (which we refer to further below) that this plan shows a right of access from Droppingwell Road via the existing entrance off Droppingwell Road and also from the historical access from Droppingwell Road opposite the junction with Dukes Lane. It is clear therefore that this plan clearly demonstrated what rights of access the Council believed were in existence as at December 1989.
34. In 1994, HPEL (now MHH) were contracted by Alick Watson Limited to act as its contractor to recommence the landfilling in a phased programme at the Site. On 17 January 1994,

HPEL wrote to the Director of Planning at the Council (copy letter attached). That letter advised that it believed that following the appeal heard by the Planning Inspectorate that landfilling at the Site could recommence under the extant permits. That letter also enclosed HPEL's "Working Plan for the phased restoration of "Watsons Tip"" (the "Working Plan") and you will note that the letter advised the Council that this represented HPEL's alteration to the working plan WD 20 R21 and that the South Yorkshire Hazardous Waste Unit (this is believed to have intended to be a reference to the South Yorkshire Waste Regulation Unit ("SYWRU")) was being contacted separately. The letter specifically requested that the Council accept the new working plan as an alteration to the existing plan and that it was believed that the proposals were in full accord with the conditions of the existing planning permission and in line with the conditions of the Department of the Environment Planning Inspectorate.

35. You will note from the Working Plan that pursuant to paragraph 2.1 it was stated that: *"Access for traffic entering and leaving the site will be via Droppingwell Road existing access point. The primary access road will be kept in good maintenance and repaired when necessary."*
36. Whilst we do not have to hand a copy of any response to the above correspondence it is clear from our files that both the Council and the SYWRU approved HPEL's Working Plan and proposals. We say this because by July 1995, correspondence exists (see attached) which shows that HPEL had cause to write to SYWRU to seek approval of a revised plan.
37. Also highly relevant is that on 7 February 1995 a meeting at the Site took place which was attended by [REDACTED] of HPEL and [REDACTED] of RMBC's planning department. The said meeting is referred to in HPEL's letter to the Council dated 10 February 1995 (copy enclosed). It is clear to see what was agreed at the site meeting as this is recorded in the letter. You will note that HPEL agreed to:
 - a. Patch the existing holes in the tarmac on the Accessway near to the entrance from Droppingwell Road;
 - b. Excavate a wider turning circle for HGV's on the Accessway at the entrance to Droppingwell Road and lay a tarmac surface;
 - c. Place rockery stone along the edges of the Accessway to prevent vehicles driving on the grass.
38. You will also note that the letter of 10 February 1995 records that: *"All this work will be carried out at our expense and would further confirm that we have your consent to carry out these works"*. We do not have a copy of the Council's written response but our position is that the work referred to in the letter of 10 February 1995 was carried out by HPEL at its own expense. [REDACTED] clear recollection is that the holes in the existing tarmacked Accessway were filled, the Accessway entrance was widened and tarmacked and large rockery stones were placed along the edges of the Accessway. The repairs to the tarmac on the Accessway were undertaken by HPEL's tarmac contractors, South Yorkshire Tarmacadam Contractors Limited. Enclosed is a copy of the working papers of HPEL's accountant dated 30 November 1995. You will note that it is recorded that the sum of

£3860.00 was paid to "S. Yorks Tarmac" in November 1995 for what is described as "Repairs Access Road Droppingwell Tip". As far as we are aware, the work carried out is still evident today. The entrance to the Accessway remains enlarged, tarmacked and the rockery stones are still in situ.

39. In June 1995, further correspondence was exchanged between HPEL and the Council specifically in relation to the phased restoration of the phase 1 of the Site. HPEL's position being set out in a letter dated 25 June 1995. The Council responded by letter dated 26 July 1995 in which it was confirmed that HPEL's revised internal access proposals were acceptable as a minor amendment to the existing agreed scheme. Copies of the correspondence are attached.

40. We would also refer you to:

a. The attached letter dated 25 April 1997 sent by the Council's Head of Planning Service to HPEL and to the solicitors then acting for the then land owners, Watson Estate. You will note from paragraph (iv) of the letter to HPEL that the Council confirmed that they were seeking clarification from Watson Estate as to whether the boulders along the side of the Accessway were to remain in place. You will note from paragraph numbered 4 of the letter to Swift & Co that it is recorded that: "██████████ agreed in the past to contain the width of the access road to the tip site from Droppingwell Road with large boulders in order to prevent HGV's overrunning grassed areas. ██████████ is prepared to remove these boulder unless they are required to be retained for phase 2. I would suggest that if your clients wish this arrangement to be retained, then it is for them to regularise this with the Amenities and Recreation Department of the Council direct (contact name: ██████████ on extension 2005) and notify me without delay. Otherwise, I shall instruct ██████████ to remove the boulders from site and make good any damage to the track through the Park."

b. The attached letter dated 13 May 1997 sent by the Council's Head of Planning Service to HPEL at around the time that Phase 1 was nearing a conclusion. The letter refers to numbered paragraph (iv) of the Council's letter to Swift & Co dated 25 April 1997 and records that Watson Estate are to seek to the permission of the Council's Amenities and Recreation Department to "leave the boulders along either side of the tip access road (from Droppingwell Road) in position to facilitate future tipping arrangements".

41. As you will appreciate, the correspondence referred to above is extremely significant. It is clear that the agreement reached between the Council and Watsons Estate was for the boulders to remain along the side of the Accessway to facilitate future tipping arrangements and the boulders remain in situ to this day. What is of equal significance is the fact these letters clearly demonstrate that the Council regarded the Accessway as being the "tip access (from Droppingwell Road)" and "the access road to the tip site from Droppingwell Road". Of course this is not surprising given that, by 1997 when these letters were written, the Accessway had been used as the access road to the Site for many years, the Council had granted waste disposal licences which identified that the Accessway was to be the main access to the Site for lorries visiting the Site to tip, and the fact that the Council had approved HPEL's Working Plan for the Site.

42. In or around early 1999, consideration was given to HPEL purchasing the Site given the successful operation of Phase 1 between 1994 and 1997. This included HPEL commissioning a report from an environmental consultancy firm as to the future viability of the Site so that due consideration could be given to purchasing the Site. By July 1999, discussions were taking place between HPEL and the EA as regards the transfer of licence WD 20 R21. HPEL were advised by the EA that if HPEL purchased Alick Watson Limited then Alick Watson Limited could simply continue to operate as the licence holder with HPEL managing the Site as a deemed technically competent person.
43. These discussions culminated in HPEL purchasing the Site from Watsons Estate on 21 March 2000 for the sum of £60,000. On the same day the entire share capital of Alick Watson Limited was purchased by Blenstone Limited, a company which was solely owned by HPEL.
44. You will appreciate therefore that our position is that all the requirements of an equitable easement by way of proprietary estoppel are in existence. It is clear beyond any doubt that the Council allowed both Watson Estates and HPEL to believe that the Council's position was that a right of way existed which allowed the Site to be used as a tipping facility. The Council allowed HPEL to act to its detriment in expending significant time and money on carrying out repairs and improvements to the Accessway and on the installation of the protective boulders. The Council has now sought to take an unconscionable advantage by denying the right that had been expected and agreed to, or so it was thought until the Council's actions on 10 October 2016, some twenty-one years after the repairs and improvements were carried out to the Accessway.
45. We would also add that in that period, the Accessway has been used regularly by HPEL/MHH, its employees, agents and contractors. The Site has been inspected and monitored on a regular basis to ensure that it is secure and safe and the Site has been regularly used for agricultural purposes. At no time has the Council sought to suggest that MHH, its employees, agents and contractors do not have the right to use the Accessway or that the Accessway is not one of the access ways that exist to access the Site from Droppingwell Road. Significantly as well the findings of fact of the Planning Inspectorate which remain unchallenged and which clearly established that: *"There are rights of access to the 1958 tip site from Upper Wortley Road and Droppingwell Road"*.

Prescription – The Doctrine of Lost Modern Grant

46. Without prejudice to the above the Accessway has been used to access the tip at the Site since the 1950s, when it first granted planning permission for the Site to be used as a tip. It will be claimed, wholly without prejudice to what is referred to above, that a right of way over the Accessway has been established by prescription under the doctrine of lost modern grant.
47. It is clear from what we have said above that the Site has been continuously operated as a tip for many years from the late 1950's (well in excess of twenty years) and that the Accessway has been used as the main access to the Site without any other lawful explanation. Our position is that such a right will have been established at least by the late 1970's.

48. We do not in the circumstances consider it necessary to expand upon this particular point at this juncture. We do though fully reserve the right to expand on this should it be necessary to do so.

Change of path of the Accessway

49. As referred to above, it is accepted that the present route that the Accessway takes, near to the junction with Droppingwell Road, differs from the line as shown in the plan to the 1929 Conveyance. We do not consider this to be material or that this materially effects the rights that exist. However, we will address this for good order.
50. It is clear from considering the Ordnance Survey maps for the Site that exist prior to 1956 that the Site was accessed via a path that that entered what is now known as Droppingwell Road opposite Dukes Lane. What is clear from the map published by Ordnance Survey in 1965 is that an additional route for accessing the Site had been created that follows the existing line of the Accessway. On all subsequent editions of maps published by Ordnance Survey after this date the Accessway is shown to follow the slight altered route to Droppingwell Road and the route as depicted in the plan to the 1929 Conveyance is depicted as a path. This is also the position as shown in the plan that was attached to your letter dated 10 October 2016.
51. What is also clear is that the Council has not at any time since 1956 either objected to the use of the Accessway to access the Site for whatever purposes or objected in any way to the slight variation of the line of the Accessway. In fact, given the plan that was produced by the Council dated December 1989 as referred to above, it is clear that the Council accepted that the line of the Accessway had been varied and that the right of way from Droppingwell Road had been varied to where it presently stands and where it has stood for well over sixty years or so.

Injunction, Declaration and Damages

52. It is clear that it was wholly inappropriate for the Council to threaten in your letter dated 10 October 2016 to seek an injunction to prohibit any alleged further trespass. It is also clear that your actions on 10 October 2016, which included the changing of the padlock on the Gate on the calling of the police to prevent the use of the Accessway by MHH's employees, agents and contractors, amounted to a substantial interference with the right to use the Accessway. That interference continued on 11 and 12 October 2016 and was only abated, on a temporary basis, by the granting of a licence to use the Accessway on 13 October 2016 when access through the Gates was provided.
53. Whilst no notice was given to MHH of your interference with the right of way over the Accessway, which was unreasonable in itself, we are prepared to allow you until 27 October 2016 to confirm in writing that the Council accepts that the Accessway is a right of access to the Site for the purposes for which the Site is designated. Further, whilst the Council has not interfered with the right of way that exists from Upper Wortley Road, we would also expect it to be confirmed in writing that a right of access to the Site also exists via Upper Wortley Road.
54. In the event that we do not receive the confirmation requested, we will have little alternative but to issue immediate proceedings at Court for a declaration confirming that a right of way exists for the reasons advance above and, in the alternative, that the finding

made by the Planning Inspectorate in 1992 is determinative of the existence of the right to use the Accessway. We shall also seek a declaration to confirm the existence and to define the extent of the right to use the Accessway independently of the findings of fact reached in 1992.

55. Those proceedings will also seek an immediate injunction against the Council to prevent the Council from interfering with the right to use the Accessway for all purposes associated with the use of the Site as has been established as set out above. Damages will clearly not be an appropriate remedy and we consider that the only effective remedy will be the granting of an injunction.
56. Further, any proceedings that are issued will also include a claim for damages that have been suffered as a direct result of the Council's interference with the right to use the Accessway. In any event, even if it is not necessary to commence proceedings against the Council for the declaratory relief and for an injunction, a claim will still be proceeded with in relation to the damages that have been suffered thus far. At present, we are in the process of quantifying the loss and damage that has been suffered as a result of the Council's actions. Such a claim will include (but not limited to):
 - a. Wasted standing time and costs incurred with the borehole drilling contractor who was prevented from both leaving and accessing the Site by the Council's actions. This claim will also include a claim for having welfare amenities on Site for a period when such facilities were stood unused together with the additional costs associated with having to remove all facilities and equipment established on Site and the costs of having to have the same mobilised and re-established on Site.
 - b. Wasted costs incurred by the employees of MHH and its agents. This includes the wasted costs of attending site on 10, 11, 12 and 13 October 2016 together with the costs that were incurred in being forced to retain a 24-hour presence on Site to secure the machinery that had to remain on Site overnight on 10 October 2016;
 - c. Legal costs incurred by MHH in the attendance at Site, the attendance at the Council's offices on 11 October 2016, the negotiation and drafting of the licence and in dealing with this matter from 10 October 2016 to date and continuing;
 - d. Wasted standing time and costs incurred by Swan Environmental Services Limited, the Construction Quality Assurance engineers that were in attendance at the Site on 10 and 11 October 2016;
 - e. The wasted costs incurred in having equipment and machinery present on Site or at the entrance to the Accessway which were not in operational use due to the Council's actions;
 - f. Travel costs to and from the Site on 10, 11, 12 and 13 October 2016;
 - g. Wasted substantial management time incurred on 10 to 13 October 2016 inclusive in dealing with the direct issues caused by the interference with the Accessway.
57. In the event that the Council accept the position advanced above in relation to the Accessway it is hoped that the Council will not oppose the claim that will be made to recover

the direct costs and losses incurred. A detailed itemised and costed schedule of the losses incurred will be provided in due course.

We look forward to hearing from you. In the meantime, all the rights and remedies of MHH and its agents are fully reserved and we fully reserve the right to refer this correspondence to the Court should it be necessary to do so.

Yours faithfully,

MHH Contracting Limited
MHH Contracting Limited

In house Solicitor

mhhcontracting.co.uk

Enc.